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David WILSON,

Plaintiff,

v.

INTERCOLLEGIATE (BIG TEN) CONFERENCE ATHLETIC ASSOCIATION, an unincorporated association et al.,

Defendants.

No. 81-2098.

United States District Court,
C. D. Illinois.
May 19, 1981

DECISION AND ORDER ON MOTION TO REMAND

ROBERT D. MORGAN, District Judge.

This is a civil action, originally filed in the Circuit Court for the Sixth Judicial Circuit, Champaign County, Illinois, as case number 80—C—801. Plaintiff is a student at the University of Illinois at Urbana-Champaign, is a member of the varsity football team, and the suit involves his eligibility to play intercollegiate football.

Plaintiff filed his original complaint in two counts on August 19, 1980, naming as defendants the National Collegiate Athletic Association (NCAA), the Big Ten Athletic Conference (Conference), Neale Stoner, as Athletic Director of the University of Illinois Athletic Association (Stoner), and the University of Illinois Athletic Association (UIAA). He sought declaratory judgment and injunctive relief. On August 26, 1980, plaintiff amended his complaint to name as alternative defendants the ten individual member schools of the Conference and the Conference Commissioner, Wayne Duke. Hearings were conducted in the state court on plaintiff's prayer for preliminary injunctive relief. Defendants, through legal counsel, participated in those hearings. A preliminary injunction in plaintiff's favor was granted on September 5, 1980. The circuit court dissolved that injunc-

tion on September 17, 1980. The Illinois Appellate Court, Fourth District, reinstated the injunction on September 19, 1980, and the Illinois Supreme Court, on October 3, 1980, denied leave to appeal. Plaintiff played football for the University of Illinois in the fall of 1980 under that injunction.

On March 25, 1981, plaintiff filed three "Additional Counts to Amended Complaint." The additional counts were directed only against defendant Conference. Conference filed a petition to remove the case to federal court on April 8, 1981. Plaintiff filed a motion to remand on May 4, 1981. The parties presented oral arguments on the remand motion on May 11, 1981, and have submitted briefs in support of their respective positions. For the reasons developed herein, the motion to remand must be denied.

I

Right to Remove Under 28 U.S.C. § 1446(b)

Plaintiff's original complaint,[1] entitled "Complaint for Declaratory Judgment and Injunction," is in two counts. Count One alleges that the NCAA[2] and Neale Stoner denied plaintiff the equal protection of the laws, as guaranteed by the Constitutions of the State of Illinois and the United States, by promulgating certain NCAA rules and applying them to plaintiff. Count Two alleges that the Conference, Stoner, and UIAA denied plaintiff procedural due process, as guaranteed by the Constitutions of the State of Illinois and the United States, during hearings that were held to deter-

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[1] Throughout this opinion the term "original complaint" denotes plaintiff's complaint as amended on August 26, 1980. The substantive claims and prayers for relief in the August 19 complaint and August 26 complaint are virtually identical. The August 26 amendment changed the alleged status of the Conference from a corporation to an unincorporated association and added the ten individual member schools of the Conference as defendants.

[2] NCAA was dismissed from the suit through stipulation on April 7, 1981.

mine the status of his eligibility to participate in intercollegiate athletics.

Both parties appear to concede that the original complaint was removable, as it stated a federal question. When defendants, for whatever reason, failed to seek removal within the time prescribed by statute, 28 U.S.C. § 1446(b), they waived their right to remove that action. *Fletcher* v. *Hamlet*, 116 U.S. 408, 6 S.Ct. 426, 29 L.Ed. 679 (1886); 28 U.S.C. § 1446(b)(¶ 2). The initial question before this court, therefore, is whether the additional counts, which plaintiff voluntarily filed in 1981, so changed the nature of the suit as to revive the right to remove. This court decides that plaintiff's voluntary amendments of March 25, 1981 did state several new federal causes of action against defendant Conference, thus reviving its right to remove.

Plaintiff's original complaint named Conference only in Count II (procedural due process). The amendments name Conference as the sole defendant, alleging violations of First Amendment rights to travel, study, associate and compete; racial discrimination under 42 U.S.C. § 1981; violation of unspecified civil rights under color of state law under 42 U.S.C. § 1983; conspiracy to discriminate against a class under 42 U.S.C. § 1985; failure to give full faith and credit under Article IV of the United States Constitution; violation of unspecified rights under the Fourteenth Amendment (all in Count III); violations of the Illinois antitrust statutes (Count IV); and sex discrimination by a public institution under 20 U.S.C. §§ 1681-83 (Title IX) (Count V).

Plaintiff argues that all of the counts arise out of a single body of facts and seek to redress a single injury, and thus constitute a single cause of action. The court cannot agree.

The determination of what constitutes a cause of action must be made here by looking to federal law, and the Supreme Court of the United States has stated:

> "A cause of action does not consist of facts, but of the unlawful violation of a right which the facts show."

American Fire & Casualty Co. v. *Finn*, 341 U.S. 6, 13, 71 S.Ct. 534, 95 L.Ed. 702 (1951), quoting *Baltimore S. S. Co.* v. *Phillips*, 274 U.S. 316, 321, 47 S.Ct. 600, 602, 71 L.Ed. 1069 (1927).

The injury that is cognizable in a court of law is injury to a *legal right*. Plaintiff argues that the injury in this case is his ineligibility to play football. However, his present ineligibility, which he seeks to change or redress, is simply the *result* of the alleged injuries to his legal rights. Thus, plaintiff's complaint, although stating a single set of facts, alleges injury to as many as nine different legal rights, and so states nine separate causes of action against defendant Conference, eight of which are first pled in the amendments of March 25, 1981.[3]

The eight new causes of action are sufficiently different from the original cause of action to give rise to new federal questions that revive the right to remove. As stated above, Conference was named originally as a defendant only in the procedural due process count. The allegations in the new counts, while based on the same facts, advance substantially different legal theories and will involve substantially different proofs and defenses than the original suit. A right to remove may be revived by amendment when plaintiff states new facts, or puts the same facts on new legal grounds, *Galesburg & Kewanee Electric Ry. Co.* v. *Hart*, 221 F. 7 (7th Cir. 1915).

Another factor that is persuasive to the court in finding new causes of action is that the amendments changed the suit from one in equity to one at law. While the distinctions between suits in law and equity are no longer great, some do still definitely exist. Plaintiff's Counts I and II asked declaratory and injunctive relief, plus unspecified damages, "if appropriate." Plaintiff's jury demand was limited to

[3]This decision does not address the validity of any of plaintiff's allegations, and hence implies nothing with respect to their possible validity.

contested issues of fact. In Counts II, IV and V, plaintiff asks no injunctive relief, seeks millions in money damages, both compensatory and punitive, and demands jury trial on all issues. It is clear that such changes amount to more than technical refinements or mere pleading tactics, as plaintiff argues. Reading the amendments as a whole, they state new federal questions, thus defendant Conference had a revived right to remove under 28 U.S.C. § 1446(b)(1 2).

II

Right to Remove Under 28 U.S.C. § 1441(c)

Having found that Conference's right to remove had been revived by plaintiff's voluntary amendment, the court must examine the pleadings in light of § 1441(c)[4] to determine whether the case is now removable.

Following the previous analysis, the court finds that Counts III and IV are separate and independent causes of action which would be removable if sued upon alone. Briefly, they name only one defendant, although relying on the same facts as Counts I, II and IV, they will require substantially different proofs; and finally they seek different damages to vindicate violations of different rights than do the other counts. These factors meet the requirements set down in *American Fire & Casualty Co.* v. *Finn*, 341 U.S. 6, 71 S.Ct. 534, 95 L.Ed. 702 (1951).

The court also finds that the removable separate and independent claims are joined with nonremovable claims. The pleadings must be evaluated in the form they are in at the time of removal. Thus, the complaint at this time consists of five counts. Counts I and II are nonremovable because their

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[4]28 U.S.C. § 1441(c): "Whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters not otherwise within its original jurisdiction."

removal was waived previously. Count IV is nonremovable because it is based solely on state law. Counts III and V are the removable claims, as previously discussed. Therefore, the court finds that the entire case is removable under 28 U.S.C. § 1441(c).

III

Procedure Perfecting Removal Under 28 U.S.C. § 1446

Plaintiff filed the amendments which revived the removability of this action on March 25, 1981. Defendant Conference filed its removal petition in the district court on April 8, 1981, well within the 30-day limit set down in § 1446(b). The court has reviewed the petition and finds it sufficient under § 1446(a). Since the removal is founded upon § 1441(c), only the defendant named in the separate and independent action is required to petition to remove. Joinder or consent of other defendants is not necessary, *14 Wright, Miller & Cooper, Federal Practice & Procedure,* § 3731 at p. 719; *1A Moore's Federal Practice,* at p. 453. So, even though the other defendants have waived any rights they had to remove, Conference does not suffer from their disability under the circumstances of this case. Thus, this court finds that defendant Conference has followed the procedure in § 1446 and that the case is properly removed to this court.

Finally, under § 1441(c), this court now does have jurisdiction over the entire case, including both federal and nonfederal claims. In the interest of judicial economy, all claims now pending will be determined in the federal case. The court has reviewed with care all of the cases cited by plaintiff to suggest contrary conclusions and considers them inapposite or unpersuasive.

Accordingly, IT IS ORDERED that the motion to remand is DENIED.

David C. WILSON,
Plaintiff-Appellant,

v.

INTERCOLLEGIATE (BIG TEN) CONFERENCE ATHLETIC ASSOCIATION,
an Unincorporated Association et al.,
Defendants-Appellees.

No. 81-2154.

United States Court of Appeals,
Seventh Circuit.

Argued Jan. 5, 1982.
Decided Jan. 26, 1982.

Robert I. Auler, Urbana, Ill., for plaintiff-appellant.

Charles L. Palmer, George V. Eighmey, Champaign, Ill., Byron L. Gregory, McDermott, Will & Emery, Chicago, Ill., for defendants-appellees.

Before BAUER, Circuit Judge, MARKEY, Chief Judge,[1] and POSNER, Circuit Judge.

POSNER, Circuit Judge.

This case, on the view we take of it, turns on the following question under 28 U.S.C. § 1446(b): if a case initially filed in state court is removable to federal court but the defendant waives his right to remove, under what circumstances will that right revive if the plaintiff subsequently amends his complaint to add new federal claims?

The plaintiff, David C. Wilson, today a quarterback for the New Orleans Saints, was in 1980 a transfer student at the University of Illinois from a junior college in California. The principal defendants are the Intercollegiate (Big Ten) Conference of Faculty Representatives, an association of ten midwestern universities, and those universities. The rules of the Conference, so far as relevant here, (1) limit a Big Ten student to four seasons of playing college football, and (2)

[1] Of the United States Court of Customs and Patent Appeals.

declare him ineligible in any season if he has failed to accumulate a specified minimum number of course credits (the number depends on what year of college he is in). When Wilson entered the University of Illinois in February 1980, he was in his third year of college and therefore ineligible to play beyond the (fall) 1980 season; and because the University refused to give him full credit for all the courses he had taken at his junior college, he was ineligible to play even in 1980 for want of the requisite accumulated credits. He sought a waiver of both rules, but after various interim decisions unnecessary to detail here the Conference refused to waive either one.

In August 1980, shortly before the beginning of the 1980 college football season, Wilson brought this suit in an Illinois state court. His complaint alleged that the Conference's refusal to waive its rules denied him equal protection of the laws and due process of law, in violation of both the United States and Illinois Constitutions. The complaint sought injunctive relief and damages. The defendants did not attempt to remove the case to federal court. The state court, Judge Clem, issued a preliminary injunction in Wilson's favor on September 5, 1980, holding that he had established a likelihood of prevailing on the merits of his constitutional claims. Judge Clem later dissolved the preliminary injunction when the defendants presented new evidence bearing on Wilson's academic progress (or rather lack thereof), but the Illinois Appellate Court reinstated the preliminary injunction on September 19 and the Illinois Supreme Court refused to review the appellate court's action. Because of the injunction, Wilson was able to play the whole 1980 football season.

We come to the critical stage of the proceedings. In March 1981 Wilson amended his complaint by adding several additional counts (and also by quantifying for the first time the damages he was seeking). The amended complaint maintained the focus of the original complaint on the Conference's refusal to waive its rules in Wilson's favor, but this refusal was now alleged to violate not only the equal protec-

tion and due process clauses of the U. S. and Illinois Constitutions but also several federal civil rights statutes (42 U.S.C. §§ 1981, 1983, and 1985); Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 *et seq.* (which deals with sex discrimination); the First Amendment to, and the full faith and credit clause of, the U. S. Constitution; and the Illinois Antitrust Act, Ill.Rev.Stat., ch.38, § 60–3. The defendants promptly filed a new petition to remove the case to federal district court. After denying Wilson's motion to remand the case to the state court, the district court granted summary judgment for the defendants on all counts and dismissed the complaint. Wilson appeals both from the order denying his motion to remand the case to state court and from the dismissal of the complaint.

If the only interests at stake in this litigation were the private interests of the parties, we might agree with the district judge that the case was properly removed to federal court. The original complaint was removable, notwithstanding the presence of a state claim in the complaint. The state claim was so closely related to the federal claim that if Wilson had brought the case in federal court the court would have had pendent jurisdiction over the state claim. Therefore the entire complaint was within the original jurisdiction of the federal courts and hence removable under 28 U.S.C. § 1441(a). See, e.g., *Hazel Bishop, Inc.* v. *Perfemme, Inc.*, 314 F.2d 399, 402–03 (2d Cir. 1963).

The defendants chose not to remove. They must have regretted this decision as they saw the case progress through the state-court system favorably to Wilson. Then Wilson (or rather his attorney) made what must have seemed to the defendants a colossal tactical blunder: amending the complaint to add a scattershot of new federal claims that no doubt struck the defendants (as they struck the district court) as insubstantial, and thereby reviving their right to remove and giving them a chance to escape from what had turned out to be an unfavorable state forum. Wilson was hoist with his own petard—and there we would leave him were it not

for the presence in this case of policy concerns, jurisdictional in nature and hence not waivable, relating to the power of the federal courts to divest state courts of jurisdiction over cases properly permitted to them.

Section 1446(b) of the Judicial Code provides that if a case filed in a state court, though removable to federal court, is not removed by petition filed within 30 days of the receipt of the complaint, it is not removable thereafter. The courts, however, have read into the statute an exception for the case where the plaintiff files an amended complaint that so changes the nature of his actions to constitute "substantially a new suit begun that day." *Fletcher* v. *Hamlet*, 116 U.S. 408, 410, 6 S.Ct. 426, 29 L.Ed. 679 (1886); see 14 Wright, Miller & Cooper, Federal Practice and Procedure § 3732, at 727–29 (1976), and cases cited therein. It is idle to pretend that the *Fletcher* test or any of the alternative formulations that the courts sometimes use (e.g., "an entirely new and different suit," *Cliett* v. *Scott*, 233 F.2d 269, 271 (5th Cir. 1956)) are self-defining. The right to revive must be determined in each case with reference to its purposes and those of the 30-day limitation on removal to which it is an exception, and against a background of general considerations relating to the proper allocation of decision-making responsibilities between state and federal courts.

The purpose of the 30-day limitation is twofold: to deprive the defendant of the undeserved tactical advantage that he would have if he could wait and see how he was faring in state court before deciding whether to remove the case to another court system; and to prevent the delay and waste of resources involved in starting a case over in a second court after significant proceedings, extending over months or even years, may have taken place in the first court. These considerations might be overborne in a case where a plaintiff, seeking to mislead the defendant about the true nature of his suit and thereby dissuade him from removing it, included in his initial complaint filed in state court an inconsequential but removable federal count unlikely to induce removal and

then, after the time for removal had passed without action by the defendant, amended the complaint to add the true and weighty federal grounds that he had been holding back. Cf. *Powers* v. *Chesapeake & O. Ry.*, U.S. 92, 99, 18 S.Ct. 264, 266, 42 L.Ed. 673 (1898); *Miles* v. *Stark*, 440 F.Supp. 947 (N.D.Tex. 1977). But this case presents the opposite pattern. Wilson tendered his fundamental federal claim, that defendants had violated his equal protection and due process rights under the U. S. Constitution, at the very outset. His amended complaint added only purely procedural count which clearly did not alter the character of the suit (the count based on 42 U.S.C. § 1983, which is a vehicle for redressing substantive violations of the Constitution, including equal protection and due process violations) and a number of other federal counts, all apparently makeweights and some never pressed at all. It seems inconceivable to us (and defendants do not argue) that Wilson's lawyer adopted this pleading sequence in order to discourage the defendants from exercising their right to removal, or that it could have had that effect.

But it would be too narrow a construction of the right of revival to limit it to cases where the plaintiff deliberately holds back his strong federal cards hoping to induce the defendant to waive his right to remove the original complaint. Amendments might fundamentally alter a complaint not because the plaintiff had been trying to mislead the defendant but because new facts had come to light in the course of pretrial discovery. In such a case—where the amended complaint in effect begins a new case—using the 30-day limitation in section 1446(b) to bar removal would not serve the purposes of the limitation in any significant way. The defendant's tactical advantage would be small because whatever favor or disfavor the state court had shown to his defense of the original complaint need not carry over to an amended complaint which by hypothesis kicks off an essentially new lawsuit. And judicial economy would not be promoted by forbidding removal because, again by hy-

pothesis, the defendant is seeking not to start an old case over in a new court but to litigate a new case in the new court.

The amendments in the present case did not change the original complaint so drastically that the purposes of the 30-day limitation would not be served by enforcing it. The amendments did not change the target of Wilson's attack or the nature of the relief sought. He still wanted the rules limiting his eligibility changed or waived and he still sought injucitive and monetary relief for the Conference's refusal to do so. The basic legal theory of his action—that the Conference rules, as applied to him, were unfair and discriminatory and that he had not been given a fair hearing in his efforts to obtain a waiver of them—was unchanged. There was thus no "abandonment of the original for a new cause of action," as in *Henderson* v. *Midwest Refining Co.*, 43 F.2d 23, 25 (10th Cir. 1930), or as in *Craig Food Indus.* v. *Taco Time Int'l, Inc.*, 469 F.Supp. 516, 521 (D.Utah 1979), where the amended complaint changed a diversity case into a federal-question case. The amendments here merely added constitutional and statutory references purporting to further show that the treatment of which Wilson complained was unlawful. That an additional state claim, based on the Illinois Antitrust Act, was also added to the complaint is not a ground for removal to federal court.

In fact this case illustrates very nicely the purposes behind the 30-day limitation. Removal to federal court long after the original complaint had been filed and substantial proceedings—unfavorable to the defendants—had taken place in the state courts interrupted an active litigation, thus reducing judicial economy, and delivered a substantial and unearned tactical advantage into the hands of the defendants. It is more likely that the defendants removed the case because they were doing badly in the state courts than because they felt that the amended complaint confronted them with a different case from the one they had been fighting in those courts. Nor, as we said before, is there any basis for supposing that the original complaint was

designed to lull the defendants into waiving their right to remove by concealing from them the true nature and dimensions of the plaintiff's federal case.

We do not wish to be understood as proposing new formulas for deciding when the right to remove revives after the 30-day deadline has passed. The issue does not lend itself to decision by verbal talismans. The intelligent decision of particular cases requires instead a sensitivity to the purposes of both the 30-day limitaion and its judicially engrafted exception. Another kind of sensitivity is also required of federal courts in dealing with this problem: sensitivity to the danger of encroaching unduly on the authority of the state courts. This case illustrates that danger. A state constutional issue that began by being litigated in the state-court system, favorably to the claimant be it noted, ended up by being decided unfavorably to the claimant by a federal district judge. It is true that even if the case had been properly removed to federal court, the court could have declined to exercise its pendent jurisdition and remanded the state claims. And a concern with the value of federalism involves a touch of irony in this case given the nature of the particular state claims: Judge Clem, in construing the equal protection and due process clauses of the Illinois Constitution, relied entirely on cases construing the counterpart clauses of the Fourteenth Amendment to the U. S. Constitution; and the Illinois Antitrust Act incorporates by reference, to the extent applicable, decisional law under the federal antitrust statutes. Ill.Rev.Stat., ch. 38, § 60–11. But although the interest of the state courts in adjudicating the particular state-law claims in this case may be somewhat attenuated, this feature of the case is idiosyncratic. It does not convert the state claims into federal claims (see Currie, Federal Jurisdiction 108–10 (2d ed. 1981)) and it does not weaken our conviction that the district courts, in interpreting and applying section 1446(b), should bear in mind, and where possible avoid, the frictions in a harmonious federal system that result when litigation involving state-law as well as federal-law issues is abruptly shifted into federal

court and the state proceedings, including here a preliminary adjudication on the merits, are set at naught.

The order of the district court, 513 F.Supp. 1062, denying the motion to remand is therefore reversed and the case remanded to that court for entry of an appropriate order remanding the case to the state court. The district court's judgment dismissing the complaint on the merits is vacated for want of federal jurisdiction.

So Ordered.

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

January 26, 1982

Before

Hon. William J. Bauer, *Circuit Judge*
Hon. Howard T. Markey, *Chief Judge*[*]
Hon. Richard A. Posner, *Circuit Judge*

DAVID WILSON
Plaintiff-Appellant,

No. 81-2154 v.

INTERCOLLEGIATE (BIG TEN) CONFERENCE ATHLETIC ASSOCIATION, an Unincorporated Association, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Central District of Illinois, Danville Division.

No. 81 C 2093

Judge Robert D. Morgan

This cause was heard on the record from the United States District Court for the Central District of Illinois, Danville Division, and was argued by counsel.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the District Court Order denying motion to remand is REVERSED, with costs, and the case is REMANDED, with directions; the District Court Judgment dismissing the complaint is VACATED, in accordance with the Opinion of this Court filed this date.

[*] Of the United States Court of Customs and Patent Appeals.

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

March 4, 1982

Before

Hon. William J. Bauer, *Circuit Judge*

Hon. Howard T. Markey, *Chief Judge*[7]

Hon. Richard A. Posner, *Circuit Judge*

DAVID C. WILSON
Plaintiff-Appellant,

No. 81-2154 v.

INTERCOLLEGIATE (BIG TEN) CONFERENCE ATHLETIC ASSOCIATION, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Central District of Illinois, Danville Division.

No. 81 C 2098

Robert D. Morgan, *Judge*

ORDER

On February 9, 1982, defendant-appellee Intercollegiate (Big Ten) Conference Athletic Association filed a petition for rehearing with suggestion for rehearing en banc. All of the judges of the original panel have voted to deny the petition, and none of the active members of the court has requested a vote on the petition.[8] The petition is therefore *denied.*

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[7] Of the United States Court of Customs and Patent Appeals.

[8] Circuit Judge Harlington Wood Jr., did not participate in the consideration of the suggestion for rehearing en banc.

In The

Circuit Court

of the Sixth Judicial Circuit
Champaign County, Illinois

DAVID WILSON,	*Plaintiff,*	
v.		
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,		
INTERCOLLEGIATE (BIG TEN) CONFERENCE ATHLETIC ASSOCIATION, an Illinois Corporation,		**No. 80-C-801**
NEALE STONER, as Athletic Director, University of Illinois Athletic Association,		
UNIVERSITY OF ILLINOIS ATHLETIC ASSOCIATION, a non-profit Corporation,	*Defendants.*	

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION

NOW COMES the Plaintiff, David Wilson, by his Attorneys, Auler Law Offices, and for his Complaint against the Defendants he alleges and states:

COUNT I

For Count I of his Complaint against Defendants National

Collegiate Athletic Association and Neale Stoner the Plaintiff alleges:

1. That all Defendants in this cause either reside in or do substantial business within Champaign County, Illinois, and that the facts of this cause arise out of an actual controversy in Champaign County, Illinois; Plaintiff seeks a declaratory judgment under § 57.1 and injunctive relief to be enforced in said County and State.

2. Defendant Neal Stoner is Athletic Director and chief administrative officer of the University of Illinois Athletic Association, a not-for-profit Illinois Corporation (hereinafter U of I AA) which conducts intercollegiate athletics for and under the supervision of the University of Illinois at its publicly-supported facilities.

3. That the Defendant Intercollegiate Conference (hereinafter Big Ten), is composed of the athletic arms of ten public and private universities which hold its stock beneficially; said Big Ten is regulated by the Athletic Directors of its stockholder universities sitting as its directors; its legislative, rule-making, and quasi-judicial functions are vested in ten (10) "Faculty Representatives" who meet as a body, and through their standing and special committees; the said Big Ten exercises authority over Defendant Stoner, Defendant U of I AA, and student athletes seeking to compete at member institutions by a system of rules of eligibility imposed and regulated by its tribunals and by penalties up to and including disqualification of individuals and, ultimately, expulsion of a member institution.

4. The Big Ten, Defendant Stoner and the U of I AA recognize, belong to and give full faith and credit to the rules and decisions of the NCAA which is an unincorporated Association of American Colleges and Universities who through the NCAA have established standards for eligibility

and competition of student athletes; and which hears disputes as to eligibility and violations in a quasi-judicial function. The NCAA maintains the power to declare individuals ineligible from post-season or championship NCAA events and to further discipline member institutions and conferences.

5. The Big Ten maintains its authority to limit the eligibility for competition at regular season, conference games of the Plaintiff David Wilson and to discipline the Defendant U of I AA if it should fail to enforce Big Ten or NCAA rules or decisions.

6. All of the Defendants purport to regulate the eligibility to compete of Plaintiff David Wilson at the U of I AA facility in Champaign County, State of Illinois and with other Big Ten and NCAA teams by rules and sanctions imposed on defendant Stoner and the U of I AA should he fail to enforce the dictates of the NCAA and the Big Ten.

7. That all of the aforesaid Defendants have established a system of subordination to rule-making, quasi-judicial procedures, and other administrative procedures which are designed to, and which in fact regulate intercollegiate athletic competition in the United States, more particularly, in the Big Ten Conference, and specifically at the U of I AA in Champaign County, Illinois; that the aforesaid system of relationships, memberships, regulation affect the public interest, the expenditure and use of public funds and facilities, and the rights, privileges, and opportunities of student athletes such as the Plaintiff David C. Wilson to compete in accordance with constitutionally proper and minimally fair standards and rules imposed upon them.

8. That the Plaintiff in September of 1977 was an eighteen-year-old college student in Fullerton, California, attending a junior college known as Fullerton College, the program of which was fully accredited and the athletic arm of which, as a two-year junior college was not eligible for membership in the NCAA, but it instead adhered to the

California Athletic Code and was a member of the South Coast Conference, and subject to its Committee on Eligibility; the aforesaid entity is a similar quasi-public institution in that it regulates and performs quasi-judicial functions which affect the use of public funds and facilities similarly to the NCAA and the Big Ten.

9. That prior to the commencement of classes, for which he was prospectively enrolled for fifteen (15) semester hours, thus being a regular student, David Wilson qualified for the Fullerton Football Team and in its first game of the year was injured on his first play from scrimmage.

10. That Plaintiff sustained a fracture of his right navicular bone which required him to wear a long arm spica cast for a period of three (3) months which disabled him from taking written notes and from functioning as a regular student in his course of study.

11. That the said Plaintiff was a young man inexperienced in interpreting complex and legalistic eligibility rules with respect to his possible transfer to various four-year academic institutions, and sought and received the advice of his academic counselor, his football coach, and his orthopedic surgeon that attempting to function as a full time student with his medical condition would seriously interfere with or defeat his academic efforts, and that dropping out of Fullerton College prior to attending any classes would not adversely affect his status either with the junior college, with its football program and his prospective two years of eligibility, nor with any future eligibility at a four-year institution; that Plaintiff had a right, and in fact, a recognized obligation under NCAA, Big Ten, and South Coast Conference rules and regulations to counsel with and rely upon the advice given him by his coach and academic counselor.

12. That Plaintiff was informed and relied upon the representations the aforesaid individuals had carefully studied various eligibility rules, and that under both South Coast and NCAA rules, Plaintiff's injury though early in the

season qualified under the "hardship rule" which the NCAA, the Big Ten, and South Coast Conference recognized, the net effect of which is to excuse from computation any season in which a football player is injured in the first twenty percent (20%) of the games, and to treat such participation as if it had not occurred for the purpose of counting seasons of eligibility.

13. That the South Coast Conference Eligibility Committee in fact granted Plaintiff the status sought and permitted him two (2) full years football competition at the institution in the fall of 1978 and 1979.

14. That Plaintiff was induced to accept and participate during these two (2) years because of the representations and advice of his coach and of his academic counselor at Fullerton College, and that he had a right to so rely.

15. That Plaintiff was recruited by the U of I AA as a player of great merit, and was promised scholarship assistance and the opportunity to play regularly at Illinois.

16. That Plaintiff enrolled for the Spring semester of 1980 and was informed that the NCAA, pursuant to its By-Laws, Article 4-1-(d)-2 would not recognize the formal grant of hardship by the South Coast Conference Eligibility Committee by way of giving such hardship status full faith and credit in computing future NCAA eligibility for post-season competition. Upon application to the NCAA, Plaintiff was informed that although he occupies a position identical to one in which a participant at a NCAA member school would be granted a hardship status for the single play of competiton, and granted four (4) full years of eligibility, that because he had sustained it at a junior college, and because of the application of the aforesaid rule, and because he had enrolled at a Division One NCAA member school, that he would only be eligible for one (1) year post-season competition.

17. That the application of the aforesaid rule creates failure of equal protection and due process with respect to the

Plaintiff in comparison with all other student athletes participating in football and injured during the first twenty percent (20%) of the season, and particularly with respect to junior college athletes so situated and transferring into Division One schools as opposed to Division Two and Three schools.

18. The specifications so created are irrational, serve no legitimate purpose and are a product of overreaching and improper and pointless regulation of public funds and facilities by the said NCAA.

19. That the Plaintiff was regulated by a quasi-public entity while a junior college student and that its determinations under an identical hardship rule are entitled to full faith and credit by the NCAA regardless of whether the Plaintiff selects a large (Division One) school or a small (Division Two or Three) school at which to complete his education and expend his remaining eligibility.

20. That upon application, the Defendant NCAA has informed Defendant Neale Stoner and U of I AA that Plaintiff is eligible for only one (1) year of post-season, championship intercollegiate athletic football competition and that his actual hardship which would, if sustained at an NCAA member institution have automatically qualified him for an additional year of competition, will not be recognized by the said NCAA.

21. That acting upon the said information, and pursuant to the requirements of the NCAA imposed upon Defendant Neale Stoner and the U of I AA as a member institution, Neale Stoner then declared Plaintiff to be eligible for only one year of post-season competition.

22. That the ruling interposed against the Plaintiff by the Defendant NCAA, and which it has caused to be enforced against him by Defendant Stoner and the U of I AA is in direct violation of Plaintiff's rights and protected interests under the Constitution of the State of Illinois and of the

United States Constitution in that he has been deprived of due process and equal protection.

23. That Plaintiff has been deprived of equal protection in one or more of the following ways:

a. that the NCAA discriminates against those athletes who begin their athletic careers at junior colleges rather than at four-year universities in that if Plaintiff had suffered the same injury while attending a four-year NCAA member university, he would have been automatically granted an extra year of eligibility under NCAA By-Law 4-1-(d)-2 by the said NCAA;

b. that if Plaintiff had chosen a Division Two or Division Three NCAA member school he would have been granted an aditional year of eligibility, thus recognizing and getting full faith and credit for the action of the South Coast Conference and thereby establishing its validity, reliability, enforceability, and appropriateness with respect to NCAA policy imposed upon small college football programs;

c. that the aforesaid violates due process in that it removes any fact-finding and procedural due process guarantees with respect to establishing the truth or falsity of the existence of such a hardship, with respect to any legitimate interests of the NCAA, in the case of transfer to a Division One school; and, at the same time, to automatically accept as valid, finding of such hardship by similar junior college entities in the event the individual transfers to a Division Two or Three NCAA school.

24. That the above-described classifications are arbitrary and capricious and that they are neither necessary nor rationally related to the accomplishment of a valid public end; and that they deprive Plaintiff of the quality of competition and the supposed fair treatment which the Defendant institutions were created to guarantee; and that such injury is irreparable and is not compensable by money damages since

the extent of his enjoyment of the sport per se is not calculable, nor are its moral and physical benefits to him calculable; moreover, the extent to which he would be able to progress in qualifying to become proficient enough to find employment as a professional athlete is incalculable with respect to the deprivation of a fair opportunity to do so by competing for the same number of years as would be tendered to a student athlete at an NCAA member school under similar circumstances.

25. That the Plaintiff desires not only to play intercollegiate football at the University of Illinois, but he is interested in, and is qualified as a prospect for, professional competition, as well as a future as a coach or athletic administrator, and the deprivation with respect to limited eligibility by the NCAA denies him constitutionally protected interests in these respects.

26. That the above-described violations of the Plaintiff's right to equal protection and due process is guaranteed by the aforesaid constitutions which will continue unless and until Defendants are enjoined by this Court.

27. That by reason of his prospective loss of one (1) year of intercollegiate athletic eligibility, Plaintiff has suffered and will continue to suffer irreparable injury to his reputation and standing in the athletic community and to his prospects as a professional athlete or coach from his inability to promote his career, practice and perform his skills, and to be viewed by professional scouts as a potential professional football player; he will continue to suffer mental stress and anxiety over the deprivation of an important right to which he was entitled, and to the waiver of which, under the reading of the NCAA provision, he was misled by his coach at the junior college.

28. Plaintiff has no plain, adequate, or speedy remedy at law to obtain any relief and this suit for declaratory and injunctive relief is his only means of securing such relief.

29. That Plaintiff is without funds; and that neither the nature of this cause nor the prospective inconvenience to Defendants in the event of wrongfully issued injunctive relief justify the imposition of a bond for a temporary restraining order, preliminary injunction, or permanent injunction should they issue.

WHEREFORE, Plaintiff:

a. demands trial by jury on any disputed issues of fact;

b. prays for a declaratory judgment that Defendants have improperly limited his eligibility to one (1) year; and

c. prays for injunctive relief by temporary restraining order, preliminary injunction and permanent injunction as the Court shall deem appropriate restraining Defendants from limiting Plaintiff's eligibility, both regular and post-season to compete in intercollegiate sports.

COUNT II

That for his Cause of Action against the Big Ten, Neale Stoner, and the U of I AA he states:

1. That he realleges as paragraphs one through twenty-nine (1-29) in this Count each and every paragraph of Count I, namely paragraphs one through twenty-nine (1-29).

30. That following the ruling by the NCAA limiting Plaintiff to one year of post-season competition, Defendant Stoner, Plaintiff, and Faculty Representative William Ferguson of the U of I AA petitioned the Big Ten for a determination (a copy of that petition is incorporated by reference and marked Exhibit A-1 through A-19):

a. That Plaintiff was eligible for two (2) years of varsity football competition in the Big Ten Conference, regardless of restrictions imposed by the NCAA upon

him reducing him to one (1) year of post-season competitive eligibility.

b. That Plaintiff be immediately eligible for competition in the 1980 football season.

c. That Plaintiff be permitted to receive scholarship assistance commencing in the Spring semester of 1980 and running through the completion of the sought-after two (2) year Conference eligibility.

31. That the aforesaid petition was made pursuant to, and always conforming with Big Ten rules, more specifically with Chapter four, Section three, Judicial Procedures, Subsection c, Waiver of Rules of Eligibility; and that the Big Ten has the power to grant the relief sought with respect to competition within the Conference and during the regular football season.

32. That the aforesaid matters were heard before the Eligibility Committee of the Big Ten at a meeting in Iowa City during April of 1980, and, pursuant to rule, Plaintiff was not permitted to be present personally or by counsel, no record of the proceedings nor any record of the debates were kept, no particular findings of fact were made, no opportunity for the presentation and the cross-examination of witnesses was afforded to the Plaintif or to William Ferguson, Faculty Representative of the U of I AA, and no constitutionally proper fact-finding procedure was followed with respect to factual determinations upon which granting or denying relief purported to be predicated.

33. That under § 4 of its chapter on procedures, the section immediately following Chapter 4, Section 3(c) which governs the procedures followed by the Eligibility Committee herein, procedures are set out for hearings to affect the continued eligibility of student athletes and member institutions in the event that misconduct or a violation of recruiting or eligibility rules, or other alleged defaults of the rules of the Big Ten are the subject; under those rules a student athlete is afforded the right to an attorney, a written record,

a preliminary investigation and written report, conclusions and findings of fact made by the Commissioner prior to the institution of formal proceedings, recommendations and a conciliation proceeding, written notice at any and all stages, and, if any individual including the student athlete should desire or request, a full hearing before the Compliance Committee in which not only the reality of conflicts of interest, but the appearance of inability to render an impartial decision shall be the subject of a disqualification proceeding on motion of any party; such hearings shall include continued right to counsel, right to testify and cross-examine, the right to present documentary evidence, the right to individually or through counsel make statements or arguments and to request the appearance of witnesses from any institution or administrative department of the Big Ten; in essence, an impartial, fair, and constitutionally impeccable procedure is established, for finding facts concerning alleged violations and other misconduct; no such procedure is established by rule nor was any such procedure followed with respect to the deliberations and fact-finding the Eligibility Committee in making factual determinations on which it predicated its rulings on the petition requesting relief by the Plaintiff. Plaintiff was not permitted to be present, to testify or present evidence, and, in fact, the entire proceeding by rule and in practice was conducted by the faculty representative of the U of I AA, William Ferguson; Plaintiff, under the rules aforesaid had no rights nor standing whatsoever before the Committee and the said Committee kept no record of any kind concerning its deliberations, its vote, nor the findings of fact upon which it predicated its decision.

34. According to Chapter 4-3-c-3 "Decisions of the Commissioner, the Eligibility Committee, or the faculty representatives shall be in writing and shall be circulated to each director of athletics, faculty representative, and the *involved student* (emphasis added).

35. This is the sole and only right granted to the student implying that he has any stake in the deliberations or

procedures of the Committee; at no time was the Plaintiff informed of the decision of the Committee either in writing or otherwise.

36. That, nevertheless, the Committee granted the Petition in part, permitting Plaintiff to commence competition in 1980 on condition that he earn fifty-one (51) semester hours prior to such commencement, but denied his request for two (2) years of varsity competition during the regular season, citing and adopting the NCAA ruling limiting him to one (1) season of post-season eligibility and thus lending full faith and credit to the NCAA finding, and fortuitously and improperly applying that finding to regular season competition when said was optional on the part of the Big Ten.

37. That following the hearing of the Committee on Eligibility, which was held in the Executive Session and under the strictures as aforesaid, Defendant Stoner, Faculty Representative Ferguson, on behalf of the U of I AA, and pursuant to Big Ten Rule, Chapter 4-3-c-2 which reads "If the decision is not unanimous it shall be referred automatically to the Faculty Representatives without report of the actual vote of the Committee. Otherwise, the decision of the Committee shall be final unless appealed by the Faculty Representative. The decision of the Faculty Representatives shall be final." Stoner & Ferguson were given the opportunity to elect whether or not to appeal by the Big Ten and its Eligibility Committee, which option would permit them, if exercised, to have the matter reconsidered by the full committee of Faculty Representatives.

38. The tender of such option to Defendant Stoner and Faculty Representative Ferguson under the aforesaid rule clearly establishes, even though the aforesaid Committee kept no records and operated in Executive Session that its finding was unanimously in favor of permitting Plaintiff to commence playing football in Illinois in the Fall of 1980.

39. That the aforesaid rule and its application established the clear right of the Plaintiff under 4-3-c-3 to be

informed in writing of the action of the Eligibility Committee, presumably for the purpose of meeting and counseling with the Faculty Representative and making a joint decision whether to carry an appeal to the full Committee of Faculty Representatives. Nevertheless, no information was ever supplied to Plaintiff by any person as to the partial victory and partial loss before the Eligibility Committee which by its vote granted one (1) year but permitted that year to be used in the 1980 Fall Football Season.

40. That without any authority whatsoever, and in violation of the aforesaid rule, requiring written notice to the involved student, the Plaintiff herein, and in violation of due process and equal protection, and without any inferential or constitutionally appropriate agency or authority, Defendant Stoner and Faculty Representative Ferguson elected to take an immediate appeal of Plaintiff Wilson's case to the full Committee of Representatives.

41. That the aforesaid Committee met within the hour and not only did not grant the original relief sought before the Eligibility Committee, to-wit: two (2) years commencing in 1980 and scholarship in the Spring of 1980; nor did they affirm the holding of the Eligibility Committee, to-wit: one (1) year to be used in the 1980 Football Season; in fact they removed and abridged the valuable right to compete in the Fall of 1980 which had just been secured for Plaintiff Wilson before the Eligibility Committee, and granted one (1) year of eligibility to be expended in the Fall of 1981.

42. The aforesaid act of Full Committee purported to be predicated upon Plaintiff earning fifty-one (51) semester hours by the beginning of classes in the Fall of 1980 and other conditions consistent with his status as a regular third-year student rather than a fourth-year student; the postponing of the year of eligibility could only be appropriate under the finding of fact he was in fact a fourth-year student.

43. The aforesaid actions of the Committee on Eligibility and the later appeal to the full Committee of Faculty

Representatives is incorporated in and summarized in a Big Ten document circulated to Defendant Stoner and titled "Summary of Petition Submitted to Academic Progress and Eligibility Committee" and is incorporated herein by reference as Exhibit B-1 through B-3. Other formal notification by letter from Eleanor A. Jessup to Professor William A. Ferguson purporting to summarize, in part, the findings and considerations before the full Committee are incorporated by reference herein as Exhibit C and appended hereto.

44. That the taking of an appeal from the finding of the Eligibility Committee was unwarranted, unconstitutional, and involved conflicts of interest on the part of Defendant Stoner, the Big Ten of which he is a director and the U of I AA and Faculty Representative Ferguson, who are involved in a status of stockholders, beneficial owners, agents, and decision-making operating officers of Defendant Big Ten.

45. That no where in any of the procedures involved in Plaintiff Wilson's petition is there any recognition of Plaintiff Wilson's interest therein except for his right to receive written notice of the action of the Eligibility Committee and later of the full Committee of Faculty Representatives, which right was abridged to his detriment; and that the fact-finding procedure, the quasi-judicial procedure, and the granting or withholding of waiver are all unconstitutionally vague, predicated upon lack of recognition of solid and constitutionally protected interests of Plaintiff, and involved an undue delegation of authority to the said Big Ten and its component parts in deciding the use of public facilities and monies and the deprivation of important portions of the lives of Plaintiff and other similarly situated.

46. That equity should enjoin the Defendant Big Ten, Defendant Stoner and the U of I AA, from taking advantage of the decision of Faculty Representatives depriving Plaintiff Wilson of his right to compete in the Fall of 1980 as a matter of temporary restraining order and/or preliminary injunction.

47. The nature of this case is such, and the interest of the parties is such that Court ought to preliminarily or temporarily enjoin or restrain the Big Ten and any of the Defendants in this cause from interfering with Plaintiff's right to compete in the Fall of 1980 without bond.

48. That Plaintiff has secured and has been credited for fifty-one (51) semester hours at the time of the filing of this cause and is qualified in every respect to play football in the Fall of 1980 under the terms of the ruling of the Committee on Eligibility.

49. That Plaintiff desires this Court to preliminarily or temporarily enjoin or restrain Defendant Big Ten and Neale Stoner and the U of I AA from enforcing any portion of the ruling made by the Committee on Faculty Representatives on appeal from the Committee on Eligibility pending full hearing of this entire Complaint so that the net effect would be Plaintiff could exercise his undisputed one (1) year of eligibility in the Fall of 1980 and that the further question of whether he is entitled to two (2) years of eligibility from the NCAA and Big Ten could then be more fully heard and determined after the taking of extensive and necessary discovery with respect to the operation of Big Ten and NCAA rules, and depositions of involved parties including respective witnesses on the West Coast.

50. That this is equitable and fair and that there clearly arises an indisputable right on the part of the Defendant, at a minimum, to the benefits of the ruling of the Committee of Eligibility.

WHEREFORE, Plaintiff prays:

a. That any disputed issues of fact herein be heard before a jury except those dealing with temporary or preliminary injunctive matters;

b. For a temporary restraining order and/or preliminary injunction without bond against the Defendants restraining them from interfering with David Wilson competing in the regularly scheduled football games in

the 1980 season of the University of Illinois Football Team;

c. For such other relief as the Court may deem just;

d. For damages, if appropriate, including attorney's fees and costs;

e. For a short date upon short notice to Defendants for a hearing on requests for a temporary restraining order and/or preliminary injunction with respect to the 1980 season.

NOW COMES, David Wilson, Plaintiff, first being duly sworn, and he states that the matters, allegations, and propositions of certitude contained in this Complaint are true.

DAVID WILSON
David Wilson

STATE OF ILLINOIS
COUNTY OF CHAMPAIGN } ss.:

SUBSCRIBED and SWORN to before me this 19th day of August, 1980.

SUSAN L. BAYLER
Notary Public

In The

Circuit Court

of the Sixth Judicial Circuit
Champaign County, Illinois

DAVID C. WILSON, *Plaintiff,* v. NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, et al, *Defendants.*	No. 80-C-801

ADDITIONAL COUNTS TO AMENDED COMPLAINT

NOW COMES David C. Wilson, plaintiff, pursuant to Ill. Rev. Stat. Ch. 110, Section 46, and leave of this Court, to add additional Counts of his Amended Complaint in the above captioned cause. Plaintiff alleges and states the following:

COUNT III

For Count III of his Amended Complaint against defendant Intercollegiate Conference of Faculty Representatives (Big Ten Conference) and its member institutions; The Trustees of Indiana University, a body politic; the Trustees of Purdue University, a body politic; Board of Regents University of Michigan, a body corporate; Board of Trustees of Michigan State University, a body corporate; Director of the State Board of Regents, University of Iowa; Board of Regents, University of Wisconsin, a corporate body; Board of Trustees, Ohio State University; Board of Regents of the University of Minnesota; and Northwestern University; plaintiff alleges and states the following:

1. All defendants in this cause do substantial business within Champaign County, Illinois, and that the facts of this

cause arise out of an actual controversy within Champaign County, Illinois; and said defendants do such business individually and through a voluntary unincorporated association known as the Intercollegiate Conference of Faculty Representatives (Big Ten Conference).

2. Said members of said unincorporated association, defendant Big Ten, are state and quasi-governmental entities except for Northwestern University which is a private University holding special charitable status under Illinois Law, and enjoying quasi-public status through public funding; and they have been and are doing substantial business within the State of Illinois, part of which is the regulation of plaintiff asserted herein.

3. At all times relative hereto, defendant Big Ten was an organization for the regulation and control of athletic activities, and functions as an entity controlling the athletic programs of its members, including defendant University of Illinois and student athletes such as plaintiff.

4. Each defendant member of defendant Big Ten Conference derives income from carrying on intercollegiate athletics and in so doing, acts under the color of state law in regulating, restricting, controlling, and supervising, athletic competition among its member institutions and student athletes of said member institutions.

5. The legislative, rule making, and quasi-judicial functions of the Big Ten Conference are vested in ten "Faculty Representatives" who meet as a body, and through their standing and special committees, the Big Ten Conference exercises authority over student athletes seeking to compete at member institutions, by a system of rules of eligibilty imposed and regulated by its tribunals and by penalties including suspension and disqualification of individuals from competition and sanctions on member institutions.

6. Said Faculty Representatives have been delegated wide discretion to use, withhold, and regulate publicly

funded facilities and property, part of which are owned and controlled by the State.

7. The Big Ten, and its individual member institutions, belong to and give full faith and credit to the rules and decisions of the NCAA which is an unincorporated association of American Colleges and Universities, who through the NCAA have established and enforced standards for eligibility and competition of student athletes.

8. All defendants named in this Count, through the Big Ten Conference and its faculty representatives, purport to regulate the eligibility of plaintiff David C. Wilson to compete for the University of Illinois Football Team, through the Big Ten's aforesaid system of regulation, restriction, and supervision; and said regulation of plaintiff's eligibility by defendants has arbitrarily and capriciously deprived plaintiff of equal protection and due process under the color of state law.

9. Plaintiff, in September, 1977, was an 18 year old college student in Fullerton, California, attending a two-year junior college, known as Fullerton Junior College, which as a two-year junior college was not eligible for membership in the NCAA, but was instead a member of the South Coast Conference, which adhered to the California Athletic Code.

10. Fullerton Junior College, as a member of the South Coast Conference, was subject to the conference's committee on eligibility, which is a quasi-public entity that regulates and performs quasi-judicial functions which affect the use of public funds and facilities concerning athletic competition among member institutions and student athletes of those institutions, and therefore is similar in nature to the NCAA and the Big Ten.

11. Prior to commencement of classes David C. Wilson qualified for the Fullerton Junior College football team and in its first game of the year was injured on his first play from scrimmage.

12. Plaintiff sustained a fracture of his right navicular bone which required him to wear a long spica cast for a period of three months which disabled him from taking notes and from functioning as a regular student in his course of study; and as a result of said injury and its accompanying medical treatment, upon the advise of his counselor, coaches and doctors, plaintiff withdrew from classes at Fullerton J.C. before the commencement of the fall semester.

13. Fullerton Junior College, through its faculty representative to the South Coast Conference, petitioned the eligibility committee of the South Coast Conference, to exclude from computation in determining seasons of eligibility of David C. Wilson, the 1977 season in which he had been hurt. Said petition requested relief under the Conference "hardship rule", adhered to for over 20 years, which is identical to the "hardship rule" recognized and employed by the NCAA and the Big Ten, the net effect of which is to excuse from computation any season in which a football player is injured in the first 20% of the games in a season, and treat such participation as if it had not occurred for the purpose of counting seasons of eligibility.

14. Upon consideration of plaintiff's petition, the South Coast Conference Eligibility Committee in fact granted plaintiff the status sought and permitted him two full years of competition at the Fullerton Junior College in the fall of 1978 and 1979 because plaintiff was injured and had participated in fewer than 20% of the games in the fall of 1977.

15. Plaintiff participated in football competition in the South Coast Conference during the fall of 1978 and the fall of 1979 and was recruited by the University of Illinois to play football for the University of Illinois football team as a player of great merit, and was promised scholarship assistance and the opportunity to play at Illinois.

16. Plaintiff enrolled in the University of Illinois for the Spring Semester of 1980 and was infomed that the NCAA, pursuant to its bylaws, Article 4-1-(d)-2 would not recognize

the formal grant of hardship by the South Coast Conference Eligibility Committee, and would not give that grant of hardship status full faith and credit in computing future NCAA College eligibility for post season competition. Upon application to the NCAA and Big Ten, plaintiff was informed that he would only be eligible for one year of post-season competition, although he occupied at the time, a position identical to one in which a student athlete injured while participating at an NCAA or Big Ten member institution would be granted a hardship status, and granted four full years of eligibility.

17. The aforesaid ruling interposed against plaintiff by defendants NCAA and Big Ten is a direct violation of plaintiff's rights and protected interests under the Constitution and laws of the State of Illinois and under the Constitution and laws of the United States of America, in that he has been deprived of due process and equal protection; and has been deprived of the rights and liberties guaranteed to citizens to travel, to associate, to study, and to compete freely.

18. Through the University of Illinois faculty representative plaintiff petitioned the Eligibility Committee of the Big Ten Conference for a waiver of the aforesaid rule and to be granted two full seasons of eligibility for conference competition. Plaintiff petition concerning the aforesaid matter was discussed and determined before a meeting of the Eligibility Committee of the Big Ten which took place in Iowa City during April of 1980 and the committee denied the relief requested by plaintiff and granted plaintiff only one year of eligibiltiy for conference competition which could be taken in the fall of 1980.

19. Plaintiff was not permitted to be present personally or to appear by Counsel at the aforesaid meeting, and no record of the proceedings nor any record of the debates were kept, no particular findings of fact were made, no opportunity for the presentation and cross-examination of witnesses was afforded to the plaintiff or to the University of Illinois faculty representative, and no constitutionally proper fact

finding procedure was filed with respect to actual determinations upon which granting or denying relief to plaintiff were purported to be predicated.

20. Without consulting plaintiff or informing him of the decision of the Eligibiltiy Committee, an appeal of the decision of the Eligibility Committee was taken by the University of Illinois Faculty Representative directly to the full body of Faculty Representatives, in flagrant violation of the established rules of the Big Ten Conference and due process, but in accordance with the precedent of the Big Ten Conference of dealing with student-athletes in abstentia and without notice or adequate representation.

21. The full body of Faculty Representatives summarily denied plaintiff's appeal of the decision of Eligibility Committee granting plaintiff only one year of eligibility for conference competition which could be taken in the fall of 1980; and contrary to the written and established rules of the Big Ten Conference, the full body of Faculty Representatives *sua sponte* withdrew the decision of the Eligibility Committee and ordered that plaintiff not be allowed to participate in conference competition until the fall of 1981.

22. Although the Big Ten Conference, through its full committee of Faculty Representatives and the Eligibility Committee of Faculty Representatives, had the power to grant the relief sought by plaintiff with respect to competition within the conference during the regular football season, the Big Ten Conference chose not to grant the relief sought by plaintiff and refused plaintiff's petition; and said refusal and failure was arbitrary, capricious, and violated the rights, privileges and immunities guaranteed plaintiff under the Constitution and laws of the United States and the State of Illinois.

23. Plaintiff desires not only to play intercollegiate football at the University of Illinois, but is also interested in, and is well qualified, as a prospect for a professional football

competition as well as future employment as coach or athletic administrator.

24. Success in the Big Ten Conference and NCAA competition is necessary if plaintiff is to be able to prepare for a position as a professional athlete, or as a coach or athletic administrator.

25. The loss of one year of intercollegiate athletic eligibility has caused plaintiff to suffer and will continue to cause him to suffer injury to his reputation and standing in the athletic community, and to his prospects as a professional athlete or coach due to his inability to promote his career, practice and perform his skills, participate in a high level of athletic competition, and to be viewed by professional scouts as a potential professional football player.

26. Plaintiff has further suffered serious and severe mental distress and strain and has been subjected to scorn, ridicule, and obloquy from the public, his teammates, and his peers, as a result of his inability to compete beyond one season.

27. Through the aforesaid actions defendants have acted under the color of state law to purposefully deprive plaintiff of his civil rights as guaranteed by the Fourteenth Amendment, Article IV of the U. S. Constitution, and 42 U.S.C., § 1981, § 1983 and § 1985 and the First Amendment.

28. Through the aforesaid actions defendants have acted under the color of state law in an arbitrary and capricious fashion and in so doing have deprived plaintiff of his civil rights as guaranteed by the First and Fourteenth Amendments, Article IV of the Constitution and 42 U.S.C., § 1981, § 1983, and § 1985.

29. Through the aforesaid actions all defendants have purposefully acted under the color of state law in an arbitrary and capricious manner to deprive plaintiff of a fair and meaningful forum for the determination of issues which have a direct and immediate effect upon the civil rights and

liberties of the plaintiff as guaranteed by the First and Fourteenth Amendment, Article IV, of the U. S. Constitution, and 42 U.S.C., § 1981, § 1983, and § 1985.

WHEREFORE, plaintiff prays:

a. for damages in the amount of Nine Million Dollars ($9,000,000.00).

b. for punitive damages in the amount of Nine Million Dollars ($9,000,000.00).

c. for a declaratory judgment that defendants have improperly limited plaintiff's eligibility to one year;

d. for costs of this suit and reasonable attorneys fees;

e. plaintiff demands trail by jury.

COUNT IV

For Count IV of his Amended Complaint against defendant Intercollegiate Conference of Faculty Representatives (Big Ten Conference) and its member institutions: the Trustees of Indiana University, a body politic; the Trustees of Purdue University, a body politic; the Board of Regents, University of Michigan, a body corporate; the Board of Trustees of Michigan State University, a body corporate; director of the State Board of Regents, University of Iowa; Board of Regents, University of Wisconsin, a corporate body; Board of Trustees, Ohio State University; Board of Regents of the University of Minnesota; and Northwestern University; Plaintiff alleges and states the following:

1. Plaintiff realleges and restates paragraphs 1-26 of Count III as Count 1-26 of Count IV.

27. the NCAA, the Big Ten Conference and its member institutions, are engaged in substantial economic activity in Illinois and are subject to the Illinois anti-trust statute, Ill.Rev.Stat.Ch.38§60.

28. The defendants named in this Count have willfully conspired to restrain student-athletes, including plaintiff,

who attend or have attended junior colleges, institutions which are not members of the NCAA and the Big Ten Conference from developing their athletic skills to a level which would allow said student-athletes to compete on an equal basis with other student-athletes and to compete successfully in professional football; and specifically plaintiff from competing to his fullest potential in both collegiate football and his desired career of professional football, in violation of Ill.Rev.Stat.Ch.38,§60-3.

29. Defendants named in this Count have willfully conspired to restrain student-athletes including plaintiff, who attend or who have attended junior colleges, institutions which are not members of the NCAA and Big Ten conference from competing for and obtaining grants-in-aid and other scholarship assistance, in violation of Ill.Rev.Stat.Ch.-38§60-3.

30. Such restraints on competition cannot be justified for an allegedly noncommercial educational purpose and in the alternative are more restrictive than would be reasonably necessary to meet any legitimate goal of aforesaid defendants.

31. The State of Illinois through its interest in and responsibility for the activity of its state supported educational institutions, and students at those institutions, has a special interest and need to insure that such restraints on competition do not exist or in the alternative, if some restraint is appropriate, that it be applied indiscriminately and in the least restrictive manner possible.

32. The existence and effect of the aforesaid rule, and the aforesaid action of defendants, have severely injured property and business rights and interest of plaintiff, in restraining his ability to compete and his employment opportunities in professional football and other athletically related careers.

WHEREFORE, plaintiff prays:

a. for a declaratory judgment that defendants have improperly limited plaintiffs eligibility to one year;

b. for damages in the amount of Nine Million Dollars ($9,000,000.00) and whatever relief this court may deem just;

c. for exemplary and punitive damages in the amount of Twenty Seven Million Dollars ($27,000,000.00).

d. for costs of this suit and reasonable attorneys fees;

e. plaintiff demands trial by jury.

COUNT V

For Count V of his Amended Complaint against defendants Intercollegiate Conference of Faculty Representatives (Big Ten) Conference and its member institutions; the Trustees of Indiana University, a body politic; the Trustees of Purdue University, a body politic; Board of Regents, University of Michigan, a body corporate; Board of Trustees of Michigan State University, a body corporate; Director of the State Board of Regents, University of Iowa; Board of Regents, University of Wisconsin, a corporate body; Board of Trustees, Ohio State University; Board of Regents of the University of Minnesota; and Northwestern University; plaintiff alleges and states the following:

1. Plaintiff realleges and restates paragraphs 1-26 of Count III as paragraphs 1-26 of Count V of his Complaint herein.

27. The aforesaid rule, employed to effect the eligibility of plaintiff, and the actions and the Big Ten Conference in interpreting and applying said rule, effect and apply to male student-athletes only, and do not effect and apply to female student-athletes.

28. The aforesaid rule and its application discriminates against plaintiff because of his sex;

29. The Plaintiff was excluded from competition in Big Ten Conference games and limited to one year of eligibility solely because of his sex; and participation in the University of Illinois football program is an activity which is part of an educational program and activity receiving federal financial assistance;

30. Defendants' exclusion of plaintiff, David C. Wilson, from participating in Big Ten Conference games and limiting his participation to one year of eligibility constitutes a violation of Title IX of the Education Amendment of 1972, 20 U.S.C. § 1681-1683.

31. Plaintiff has been severely injured in the aforesaid manner as a result of defendants discrimination against plaintiff because of his sex.

WHEREFORE, plaintiff prays:

a. for damages in the amount of Nine Million Dollars ($9,000,000.00) and whatever other relief this court may deem just;

b. for a declaratory judgment that defendants have improperly limited plaintiff's eligibility to one year;

c. for costs of this suit and reasonable attorneys fees;

d. for punitive damages in the amount of Nine Million Dollars ($9,000,000.00).

e. plaintiff demands trial by jury.

Respectfully submitted,

DAVID C. WILSON

By: ROBERT I. AULER
Robert I. Auler

AULER LAW OFFICES
202 W. Green Street
Urbana, Illinois 61801
(217) 384-3080

In The

Circuit Court

of the Sixth Judicial Circuit
Champaign County, Illinois

DAVID WILSON, *Plaintiff,* vs. **NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, ET AL.,** *Defendants.*	No. 80-C-801

REPORT OF PROCEEDINGS

REPORT OF PROCEEDINGS at the hearing in the above-entitled cause before the Honorable Harry E. Clem, on the 27th day of August, 1980.

APPEARANCES:

Mr. Robert Auler,
Attorney at Law
Appearing on behalf of the Plaintiff;

Mr. Byron Gregory
Mr. Steven Hoeft
Mr. Cameron Dobbins
Attorneys at Law
Appearing on behalf of the Big Ten Conference, Wayne Duke, etc.;

Mr. Charles Palmer
Mr. James J. Costello
Mr. Donald Henss
Attorneys at Law
Appearing on behalf of the Defendant University of Illinois Board of Trustees;

Mr. George Miller
Attorney at Law
Appearing on behalf of Defendants Neale Stoner and University of Illinois Athletic Association.

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MR. PALMER:

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I wish that I didn't have to take this position because I want to be, on behalf of my client, as I know it wants to be, totally supportive of this conference and its rules, and it is. But it has got to be supportive of its student athletes at the same time and it's got to take a posture in a matter such as this that requires the enforcement of those very rules it lives by as a member of the conference. And there is where the problem arises. *It is, therefore, the University's position in this case that it is absolutely supportive of the issuance of the temporary injunction on behalf of the Plaintiff.*

MR. AULER: Preliminary?

MR. PALMER: Preliminary injunction.

THE COURT: Mr. Miller, you may argue.

MR. MILLER: *Your Honor, I wish to adopt what my colleague has said* and be allowed five to seven minutes more to touch upon something that has disturbed me and which I think has been developed by further analysis that was alluded to by Mr. Gregory in regard to the rule that we have spent so much time talking about on Page 12 of the rule handbook at the bottom of the page, this Eligibility Committee and the appeal from it. . . .

• • •

Now, I came into this case with the pronouncement that I wanted to be neutral. I felt that I was in between the Big Ten and the Plaintiff. As I heard the evidence, I could not help myself from moving from that position, and now I'm left, after the impassioned plea of counsel for the Big Ten, a plea that has my admiration, with my own summation that I have heard irony and I have heard hypocrisy and I've observed self-righteousness. The Big Ten was formed to recognize student athletes and yet they say that they appraise, they evaluate academic progress, but they do not

evaluate or recognize degrees of athletic competence. They say that their concern is with athletic progress ignoring the reality that all of us admire, the student athlete, the college degrees of the Phi Beta Kappas, that the faculty members, that everyone in the college town plead for the better football team, they thrill to meet Dave Wilson, they revere their coach. Pro football is on the screens of all of us on Monday night. It's big business in college and it's big business outside of college and everyone pleads for it and it swells the coffers of the University, and they tell us that all they care about is academic progress. Hypocrites—and hiding behind self-righteousness.

My seven minutes are up.

• • •

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT CHAMPAIGN COUNTY, ILLINOIS

I, MARY M. FRAME, an Official Court Reporter for the Circuit Court of Champaign County, Sixth Judicial Circuit of Illinois, do hereby certify that I reported in shorthand the proceedings had on the hearing in the above-entitled cause; that I thereafter caused the foregoing to be transcribed into typewriting, which I hereby certify to be a true and accurate transcript of the proceedings had before the Honorable Harry E. Clem, Judge of said Court.

MARY M. FRAME
Official Court Reporter

Dated this 31st day
of October, 1980.
(Emphasis added).

In The

Circuit Court

of the Sixth Judicial Circuit
Champaign County, Illinois

DAVID WILSON,
Plaintiff,
v.
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, ET AL.,
Defendants.

No. 80-C-801

REPORT OF PROCEEDINGS

REPORT OF PROCEEDINGS at the hearing in the above-entitled cause before the Honorable Harry E. Clem, on the 2nd day of September, 1980.

APPEARANCES:

Mr. Robert Auler
Attorney at Law
Appearing on behalf of the Plaintiff;

Mr. Byron Gregory
Mr. Steven Hoeft
Mr. Cameron Dobbins
Attorneys at Law
Appearing on behalf of the Big Ten Conference, Wayne Duke, etc.;

Mr. Charles Palmer
Mr. James J. Costello
Mr. Donald Henss
Attorney at Law
Appearing on behalf of the Defendant University of Illinois Board of Trustees;

Mr. George Miller
Attorney at Law
Appearing on behalf of Defendants Neale Stoner and University of Illinois Athletic Association.

• • •

MR. PALMER:

• • •

Now, upon reflection what concerns me most is that that dismissal was sought solely to remove an Illinois resident as a defendant and then the request was made to realign the other defendants as plaintiffs rather than defendants. *In order to serve as the basis for an attempt to remove this from the Court's jurisdiction under circumstances, then when the contention would be made we are the only defendant, everybody else are plaintiffs, and therefore, when we want it removed, it will be removed because of some federal question to another Court, I feel that I may, by agreeing to that initially for a different reason, have been had and I don't like that idea,* and should the Court feel that my request at this time, namely, that we be left designated a defendant and that procedurally Mr. Gregory and the Big Ten's rights be protected with reference to these matters of procedure, opening and closing, cross-examination, should the Court not agree with my contention, it is my further request that I be allowed to withdraw my agreement to the dismissal of Mr. Duke because *if the only purpose of all of this is to lay the foundation for a removal to another court, I do not wish to join voluntarily in being a part of that.*

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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT CHAMPAIGN COUNTY, ILLINOIS

I, MARY M. FRAME, an Official Court Reporter for the Circuit Court of Champaign County, Sixth Judicial Circuit of Illinois, do hereby certify that I reported in shorthand the proceedings had on the hearing in the above-entitled cause; that I thereafter caused the foregoing to be transcribed into

typewriting, which I hereby certify to be a true and accurate transcript of the proceedings had before the Honorable Harry E. Clem, Judge of said court.

MARY M. FRAME
Official Court Reporter

Dated this 30th day
of December, 1980.
(Emphasis added).

In The

Circuit Court

of the Sixth Judicial Circuit
Champaign County, Illinois

DAVID WILSON, *Plaintiff,* v. **NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, etc.**	No. 80-C-501

MOTIONS

REPORT OF PROCEEDINGS

REPORT OF PROCEEDINGS before the HONORABLE HARRY E. CLEM, on the 20th day of February, 1981.

APPEARANCES:

Mr. Robert Auler,
for the Plaintiff.

Mr. George Bryan
for National Collegiate Athletic Association

Mr. Don Henss

Mr. James J. Costello

Mr. Charles L. Palmer
for Board of Trustees, University of Illinois

Mr. Byron Gregory

Mr. D. Cameron Dobbins

Mr. Roger Wenthe
for Intercollegiate College of Faculty Representatives.

Kathy Struck
Official Reporter

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MR. AULER: *Your Honor, there is a motion on file by the University of Illinois claiming protection under the Court of Claims Act from suits before the Circuit Court effecting [sic] it financially. To the extent that that goes to our claim for damages. We believe they are correct and we confess that motion.* That may speed up the process and avoid having to hear that motion as well.

MR. PALMER: May it please the court. There is—there has been filed a motion to strike by the defendant the Board of Trustees of the University of Illinois which is directed to any and all claims for damages or attorney's fees by the plaintiff against the Board of Directors of the University of Illinois. It was my understanding that back in January that all matters unresolved but of file would be heard today and therefore, I do not have separate notice of the hearing today of that motion but had filed it heretofore and had served all counsel. I will, of course, accept plaintiff's representation of acceptance and the courts granting of that motion but I do want to represent to the court and the record that prior to this moment I had not had that representation although I appreciate it now and prior to today I had no knowledge of the amendments to the complaint which were sought which I now understand involving any kind of damages are not directed to my client.

MR. AULER: *For that reason I was convinced by the force of your motion.*

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WHICH WERE ALL OF THE PROCEEDINGS HAD IN THE ABOVE ENTITLED CAUSE ON SAID DATE.

KATHY STRUCK
Official Reporter

(Emphasis added).

STATUTES CONSTRUED

28 U.S.C. § 1441(a), (b) (1976): Actions Removable Generally

> (a) Except as otherwise expressly provided by Act of Congress, and civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.
>
> (b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

28 U.S.C. § 1446(b) (1976): Procedure for Removal

> (b) The petition for removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.
>
> If the case stated by the initial pleading is not removable, a petition for removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

28 U.S.C. § 1447(c) (1976): Procedure After Removal Generally

(c) If at any time before final judgment it appears that the case was removed improvidently and without jurisdiction, the district court shall remand the case, and may order the payment of just costs. A certified copy of the order of remand shall be mailed by its clerk to the clerk of the State court. The State court may thereupon proceed with such case.